L. 1162. But when, as in the principal case, the only question raised before the commission is as to the constitutionality of a statute which it is enforcing, the action of the commission is purely judicial in its nature. Consequently an appearance before the commission on such a matter would be equivalent to going into a state court, and under the ordinary doctrines of comity the federal court would then properly refuse to entertain the petition until the remedies afforded by the state courts had been exhausted. *Peck* v. *Jenness*, 7 How. 612; see note to *Louisville Trust Co.* v. *Cincinnati*, 22 C. C. A. 359. The apparent inconsistency involved in denying that the commission is a court within the Judicial Code, and at the same time recognizing its judicial character for the purposes of comity when it passes on the validity of a statute, should offend no one. The difficulty is not substantial, and results merely from paucity of legal terminology.

ILLEGAL CONTRACTS — CONTRACTS AGAINST PUBLIC POLICY — CONTRACT TO WAIVE STATUTORY ABOLITION OF THE FELLOW SERVANT RULE. — State statutes abolished the fellow servant rule as applied to railroad employees, and substituted a rule of comparative negligence for the defense of contributory negligence. MISS. LAWS, 1908, c. 194; MISS. LAWS, 1910, c. 135. In his contract of employment the plaintiff assumed the risk of all injuries arising out of his own or a fellow servant's negligence. He was injured through his own negligence combined with that of a fellow employee. *Held*, that he may recover. *Illinois Central R. Co.* v. *Harris*, 67 So. 54 (Miss.).

A contract by which an employer is absolved from liability for negligent injury to his employees is generally held void as against public policy. *Little Rock & F. S. Ry. Co.* v. *Eubanks*, 48 Ark. 460, 3 S. W. 808; *Consolidated Coal Co.* v. *Lundak*, 196 Ill. 594, 63 N. E. 1079; *contra*, *Western & Atlantic R. Co.* v. *Bishop*, 50 Ga. 465. In England, however, a contract waiving the statutory abolition of the fellow servant rule is valid. *Griffiths* v. *Earl of Dudley*, 9 Q. B. D. 357. But in this country the contrary view prevails. *Atchison, T. & S. F. Ry. Co.* v. *Fronk*, 74 Kan. 519, 87 Pac. 698; *Tarbell* v. *Rutland R. Co.*, 73 Vt. 347, 51 Atl. 6. Similarly where the vice-principal doctrine is adopted, a contract waiving recovery for injury by a negligent vice-principal is invalid. *Lake Shore & M. S. Ry. Co.* v. *Spangler*, 44 Oh. St. 471, 8 N. E. 467; *cf. Little Miami R. Co.* v. *Stevens*, 20 Oh. 415. In general, wherever a statute regulating the relation of master and servant is reinforced by criminal penalties, a private agreement to waive its benefits would be clearly invalid. *Ten-Hour Law for Street Ry. Corporations*, 24 R. I. 603, 54 Atl. 602; *Short* v. *Bullion-Beck & Champion Mining Co.*, 20 Utah 20, 57 Pac. 720. *See Holden* v. *Hardy*, 169 U. S. 366, 397; 26 HARV. L. REV. 262. On the other hand, a contract to waive the benefits of a civil statute designed to protect only the parties to the contract will be enforced; but if the purpose of the statute was to benefit the public generally the waiver will be invalid. The view of the principal case that it is against the policy of the statute to allow it to be waived seems sound, and in accord with the principles usually followed in this country.

ILLEGAL CONTRACTS — CONTRACTS COLLATERALLY RELATED TO SOMETHING ILLEGAL OR IMMORAL — ACTION BY MONOPOLY ON CONTRACT LEGAL IN ITSELF. — In an action to recover the price of goods sold to the defendant, the latter alleged as a defense that the plaintiff was an illegal monopoly of all the glucose manufacturers in the United States; and that for the purpose of perpetuating its control of the market the plaintiff had devised a profit-sharing scheme whereby rebates were paid to all purchasers provided that during the year last preceding they had dealt only with the plaintiff; and that each contract denied the right of the purchaser to resell. *Held*, that the answer alleged no defense.

Wilder Manufacturing Company v. *Corn Products Refining Company*, 236 U. S. 165.

For a discussion of this interesting question arising under the Anti-Trust Act, see NOTES, p. 691.

INSURANCE — MUTUAL BENEFIT INSURANCE — CHANGE OF BENEFICIARY: EFFECT OF PAYMENT OF ASSESSMENTS BY PRIOR BENEFICIARY. — The wife of a member of a fraternal benefit society paid the assessments on the policy, which named her as beneficiary, and had been delivered to her by her husband with permission to keep up the assessments. She was then divorced and the husband named a new beneficiary in accordance with the by-laws of the society. Further assessments tendered by her were refused by the society, and on the death of the insured she claims the proceeds of the policy. *Held*, that she cannot recover. *Schiller-Bund* v. *Knack*, 150 N. W. 337 (Mich.).

Unlike an ordinary life insurance policy, a fraternal insurance certificate, the terms of which permit the insured to change the beneficiary at his pleasure, gives the beneficiary no vested right. *Woodruff* v. *Tilman*, 112 Mich. 188, 70 N. W. 420; *Masonic Benefit Ass'n* v. *Bunch*, 109 Mo. 560, 19 S. W. 25. But the beneficiary may otherwise acquire such an equitable right as to estop the member from exercising this power, as, for example, by a contract not to change the beneficiary. *Webster* v. *Welch*, 57 N. Y. App. Div. 558, 68 N. Y. Supp. 55; *In re Reid's Estate*, 170 Mich. 476, 136 N. W. 476; *Leaf* v. *Leaf*, 92 Ky. 166, 17 S. W. 354. But if, as the court finds on the facts in the principal case, there is a mere payment of the assessments by the beneficiary named, without any contract with the member, there is nothing to prevent the member's making the change. It is said that the beneficiary pays any assessments with full notice of the contingency of his right. *Jory* v. *Supreme Council*, 105 Cal. 20, 38 Pac. 524; *Fisk* v. *Equitable Aid Union*, 7 Sadler (Pa.) 567, 11 Atl. 84; *Spengler* v. *Spengler*, 65 N. J. Eq. 176, 55 Atl. 285. Nevertheless, it has been held that the prior beneficiary should have a lien for the amount of the assessments he has paid, on the ground that to deprive him of all relief would be unconscionable. *Grand Lodge A. O. U. W.* v. *McFadden*, 213 Mo. 269, 111 S. W. 1172; *cf. Supreme Council of Royal Arcanum* v. *McKnight*, 238 Ill. 349, 87 N. E. 299; see *Masonic Benefit Ass'n* v. *Bunch*, *supra*. But in the absence of mistake, payments made without any agreement, express or implied, appear to be purely voluntary, and should afford no basis for recovery. *Supreme Lodge N. E. O. P.* v. *Hines*, 82 Conn. 315, 73 Atl. 791; *Heasley* v. *Heasley*, 191 Pa. 539, 43 Atl. 364. The denial of all relief by the principal case is therefore proper, so long as its rather improbable construction of the facts is adopted.

INTERSTATE COMMERCE — CONTROL BY CONGRESS — CONFLICT BETWEEN FEDERAL AND STATE POLICE REGULATIONS: SAFETY APPLIANCE LAWS. — A state statute required railroads to equip all cars with grab-irons and handholds. The Federal Safety Appliance Act subsequently imposed a similar requirement, with some different specifications as to details. The state railroad commission now brings suit for a violation of the state statute as to a car moving on a railroad engaged in interstate commerce. *Held*, that in this case the Federal Act has superseded the state statute. *Southern Ry. Co.* v. *R. R. Comm. of Indiana*, 236 U. S. 439.

The Supreme Court in this decision adds another to the long list of cases which hold that once Congress has acted in the exercise of its paramount power to regulate interstate commerce, the police power of the state is thereby ousted to that extent, even though the requirements imposed by state legislation are not themselves in conflict with the federal regulations. *Houston &*